G. R. S. App. F. IX-4]

Previous References.
W 264-42-1644.

Later References.

1942-3.
(War-)

War File No. 48-42
Serial Nos. 1

(D-15)

GENERAL AND REVENUE SECRETARIAT

Serial Nos. In Orig.

Part B for January 1942.

SUBJECT.

Prosecution of Mr. M. H. Saccai, Sub-Postmaster, Kavaratti, under the Defence of India Rules.

M. Krishnan
5.X.42.

Police

G.R.S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

From

The Dist Magte, Kadur Dist

Letter No J.C. 3756 dated 16th Septr 1942 forwarding for information, a copy of the order passed by the Magistrate discharging the accused Mr. Maccai who was charged under rule 24(6)(c) read with rule 34(7) read with rule 35 of the Defence of India Rules.

—//—

Submitted for kind perusal.

The charge against the accused was that on the 10th April 1942 he told one Mr. Pais and Abdul D'Souza that Madras & Bangalore were bombed & that the Ship Canal dredging at Madras was damaged. He was tried in the Court during which time the Magte found that his statement before two persons did not constitute an offence of publishing to the public & discharged him.

This may be sent to the War Section where the previous papers are.

6
18/9/42

N.B.—*Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.*

WD 05639—36,000—GPB—20-3-40

Asst Secy
War. W.C.

994
W.

The premises
Collection of plans

21. SEP.
GOVT OF I.

OFFICE OF THE
MINISTER FOR LAW
SEP 22 1942
No. 2493

The amount is discharged but
the arguments in the judgment
are not very convincing.

W48-42-1 994/15 1252/42

No. J. C3756/42

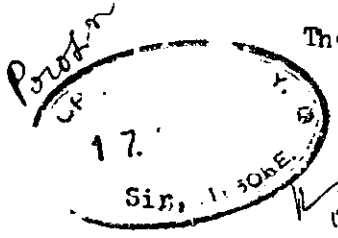
Office of the District Magistrate,
Kadur District,
Dated, Chikmagalur, 16th September 1942.

From

The District Magistrate,
Kadur District,
Chikmagalur.

To

The Chief Secretary
To the Government of Mysore,
BANGALORE.



Sir,

I have the honour to state that the case filed against Mr. M.H. Maccai, Ex-postmaster, Santhaveri before the Munsiff-Magistrate, Narasinmharajapura for an offence under rule 34 (6) G and rule 34 (7) read with rule 35 of the Defence of India Rules as applied to Mysore was disposed of by the Magistrate on 8th September 1942 discharging the accused Mr. Maccai. A copy of the order passed by the Magistrate in the case (C.C.32/42-43) is enclosed herewith for kind perusal.

I have the honour to be,
Sir,
Your most obedient servant,

DISTRICT MAGISTRATE,
Kadur District.

IN THE COURT OF THE MUNSIFF MAGISTRATE, NARASIMHARAJAPURA.

Dated the 8th day of September 1942.

PRESENT:- A. A. Majid, Esquire, B.A., B.L.,
Munsiff Magistrate, Narasimharajapura.

C.C. No.32/42-43

Offence punishable under Rule 34 (6) (G) and Rule 34 (7) read with Rule 38 (5) of the Defence of India Rules.

Complainant:-	Accused.
Government.	Mr. M.H. Maccai, son of Mx.M.Z. Maccai, Santhevori
(Tarikere Police)	Tarikere Taluk.

O r d e r.

This is a case charge sheeted by the Police of Tarikere under Rule 34 (6) G and (7) read with Rule 38 of the Defence of India Rules as applied to Mysore.

2. The Prosecution story is that on 10-4-42 the accused accounced in the presence of one B.A.L. Pais and one Albert D'Souza that Madras and Bangalore were bombed and that the High Court building at Madras was damaged. It is also alleged that the accused informed these people that he had received this information through the radio.

3. The prosecution has closed the case after examination of 9 PWs. The documents filed by the prosecution are marked Exhibits P-1 and P-2 and the documents filed by the accused are marked Exhibits D-1 ~~and~~ to D-3.

4. After the case for the prosecution was closed the accused was called upon to make his statement and he stated that he is innocent.

5. It now remains to be seen whether the prosecution has succeeded in establishing a prima facie case which if unrebutted would warrant a conviction. The prosecution has to let in evidence to prove as required by Rule 34 of the Defence of India Rules that the accused made the alleged statement and that the said statement was intended or likely to cause fear or alarm to the public or to any

section of the public, under the circumstances of this case.

6. I will presently discuss the prosecution evidence on the above points in order to decide whether the requirements of Law have been fulfilled in this case.

7. The only witnesses examined by the prosecution to prove that the alleged statement was made by the accused are P.Ws. 1, 2 and 6. P.Ws. 1 and 2 state that the accused did say in their presence on 10-4-42 at the Post Office of Santaveri at about 12 a.m. that the accused informed them that Madras was bombed on the morning of 9-4-42 as a result of which the High Court building was damaged and Bangalore was bombed on 10-4-42. P.W. 6 swears that he only heard from p.w.1 that the accused had made such a statement. P.Ws. 1 and 2 also add that the accused told them that this was radio news. If the evidence of these P.Ws. is believed it may be said that the accused did make the statement for which he is prosecuted, but before the evidence of the P.Ws. is accepted their mental attitude towards the accused and their veracity have to be judged. After a close examination of the evidence of these P.Ws., I am of opinion that the witnesses are prejudiced against the accused for the following reasons. P.W.1 has admitted during his ~~xxxx~~ cross examination that he once went to the accused and wanted the accused to give him Insurance cover before 11 a.m., but ~~he~~ the accused bluntly refused to do so. This refusal on the part of the accused is said to have led to a discussion. It is also admitted by this witness that he immediately reported the matter to his master Viz., P.W. 6 Therefore there is every reason to believe that there is bad blood between the accused and P.Ws. 1 and 6 although they do not admit it. If there was no ill-will between p.w.6 and the accused as he asserts, there was nothing hindering him from verifying the statement received from P.W.1 by writing

to the accused. As the facts now stand P.W. 6 has written to P.W.7 and asked him whether there was any special news on the radio instead of referring to the accused himself who was the best person to give him the information. The evidence of p.w.6 discloses that he was not a stranger to the accused and therefore there was nothing to prevent him from going to the accused for the information if he was not prejudiced.

8. From the circumstances discussed above, it is evident that there is no love lost between the accused and P.Ws.1 and 6. The only other witness who is said to have heard the statement is p.w.2 It may be seen from his deposition that he is an employee of p.ws. 6 and 1 and therefore it is obvious that he is bound to help them in this matter.

9. Assuming for a moment that these witnesses are not prejudiced against the accused, could it be said that they have spoken nothing but the truth. Once again the depositions may be looked into with a view to determine this all important question. P.W.6 in his deposition states that on the day on which he got the information from p.w.1 he discussed the matter with his wife. The evidence of this witness taken along with the statement of p.w.1 shows that the information was received by him on 10-4-42. Therefore it is obvious that this witness is trying to make the court believe that he was seriously alarmed by the information and therefore he talked about it on the same day with his wife. Can this statement of P.W.6 be believed is the question that has to be determined by reference to the depositions of p.ws. 8 and 9. P.W.9 is the Ayah of p.w.6. She says that she overheard the conversation that was going on between her master and his wife and immediately wrote to her children at Bangalore

Bangalore, enquiring about their welfare. P.W.8 is the scribe of that letter and he says that he wrote the letter a week after P.W.s 1 and 2 had gone to the post office together. Therefore, from th evidence of P.W.s8 and 9, it is clear that P.W.6 talked about the news to his wife about a week after he had received it. But nevertheless, P.W.6 himself asserts that the talk took place as soon as P.W.1 had conveyed the news to him. From the contradiction discussed above it may be seen that at least this particular statement made by P.W.6 is not free from doubt and therefore I am of opinion that it is not safe to accept his testimony. Similarly I am of opinion that the evidence of the P.Ws.1 and 2 is not free from doubt for the following reasons. P.W.2 admits in his cross examination that he had gone to Sidrabyle on 10/4/42 with another for doing contract work as usual and that he was working there from 11-30 a.m. to 7 p.m. Therefore it may safely be inferred that he had left Santveri somewhere between 10 and 11 a.m.; but nevertheless he wants the Court to believe that he was present at the post office at about 12 a.m. or 12-30 p.m. when the alleged offence is said to have taken place. This is a discrepancy which shows that the witness is deposing artificially and that he is under the influence of his patrons.

10. The evidence of P.W.1 is equally untrustworthy because he deposes before the Court that he did not come to know that the alleged statement was false after referring to the news-paper of his master but in Ex.D-II which is admitted by him to be his statement recorded by the Police during the investigation he has stated that he did come to the conclusion that the alleged statement was false after verification. Moreover, this witness wants to make out that the accused told him nothing besides the alleged bombing of Bangalore and Madras and therefore he denies the passage contained in Ex.D-2-a. In this passage it has been recorded that the accused gave P.W.1 the informa-

-tion

information complained of during a conversation. If the information was given during a conversation as recorded in Ex.D.2-a, the context would throw a considerable amount of light upon the meaning that has to be attached to the statement complained of; obviously the witness does not wish to disclose that context and therefore he denies the statement contained in Ex.D.2-a after having admitted the whole of the statement recorded in Ex.D-2. No doubt P.W.5 the investigating officer states that Ex-D-2 is only the substance of the statement of P.W. 1 recorded by him. But the deposition of this witness in this matter is of little value because Ex.D-2 is described as the statement of P.W.1 in the headnote. Moreover Ex.D-2 occurs in the case diary and not in P.W.5's investigation notes. Therefore it cannot be believed that the officer has been investigating his own story. The document itself has been sufficiently proved by the admission of P.W.1. Therefore apparently P.W.1 seems to be anxious to achieve his object by every means in his power. He is concealing the context with this purpose and the presumption is that if the context was disclosed the accused would be found to be innocent.

11. Having so far given my reasons for disbelieving the evidence on record, I will presently examine the Law applicable to the facts of this case. The Law requires that the alleged statement should have been intended to cause alarm to the public or to a section of the public or in the alternative it should have been likely to cause fear or alarm to the public or to a section of the public.

12. That the statement, if it was really made, was not intended to cause fear or alarm is sufficiently proved because P.W.1 says that P.W.1 was talking in a pleasant way and that he did not mean to alarm anybody.

13. Therefore the next question that comes up for

for determination is whether the statement is likely to cause fear or alarm to the section of the publi, viz., the P.Ws. to whom it was communicated by the accused. The only persons to whom the information is alleged to have reached are P.Ws., 1, 2, 6 and 9. Of these witnesses p.w.2's evidence is absolutely unbelievable because he has not been present at all at the post office at 12 a.m. on 10/4/42 as discussed above. Moreover, the information is said to have been given to P.W.1 alone by the accused and therefore it is doubtful whether it was ever overheard by P.W.2 even if he went to the post office for purchasing a post card. The evidence of P.W.1 disclosed that the whole talk was over within a fraction of a second and therefore it is not believable that P.W.2 went along hearing the alleged statement from the steps of the verandah to the window and yet he heard every word of it. If the conversation did not take more than a fraction of a second as alleged by p.w.1 it must have begun and ended while p.w.1 was still in the verandah. The next point to be determined is whether the statement was likely to alarm the public or any section of the public assuming it to have been really made. P.W.1 swears that he was not alarmed at all because he did not believe it. Therefore there was no chance of his communicating it to the public or to any section of the public. No doubt, it is stated by p.w.6 that the statement was communicated to him by p.w.1 on 10/4/42 itself but the evidence of p.ws.7 and 9 read with the evidence of p.w.6 himself shows that the news could not have reached him earlier than the 16th of April 1942. In the meantime p.w.6 has been receiving the dak copies of the Madras Mail and therefore when he heard the news from p.w.1 reasonably speaking, he could not have believed it. No doubt p.w.6 has written a letter to p.w.7 asking him whether there was any special radio news on 10/4/42

but this does not mean that was enquiring about the alleged bombardme t at all. On the other hand, if he had received the news on 10/4/42 as alleged by him he would have written to the accused himself in my opinion. Therefore, from the facts discussed above, it is evident that the alleged statement was not likely to alarm anybody at all.

14. Of course p.w.9 swears that she really got alarmed and wrote to her children. But as I have already discussed, this was a week after the alleged incident. P.W.6 who had sufficient time to verify the news cannot now turn round and say that he publised it to p.w. 9 a week after the accused had made the alleged announcement. Therefore assuming that the accused did make the announcement it may be inferred that under the circumstances in which it was made, it was not likely to spread to the publ u or to a section of the public and to cause fear or alarm to anyone.

At any rate, it is evident that the statement as a matter of fact, has not been communicated to the public or to any section of the public. P.W.9 no doubt says that she did write to her children but she cannot be believed in the absence of the letter itself; nor has the prosecution examined the two other ladies with whom p.w.6 is alleged to have talked over the matter. Therefore the only persons to whom the information has reached at the first instance are P.Ws.1, 2 and 6. I have already found that p.w.2 was not at all present at the post office at the time at which the occurrence is said to have taken place. He says that he gave the information to his mother and since she is not examined, he cannot be believed. The only other persons who are said to have heard the news are p.ws.1 and 6. Can it be said that a couple of persons who have received this information constitute the public or a sectior of the public is the question which calls for decision. In my opinion

the rules do ~~not~~ make a distinction between individuals and the public or a section of the public. Anyhow public or a section of the public are expressions which have not been defined. But from the wording of Cl.(3) of section 144 Cr.P.C., it is evident that individuals are to be distinguished from public.

15. It may now be argued that the individuals were likely to have spread the rumour and thus indirectly the alleged statement was likely to cause fear or alarm as required. But as I have already stated, there was no reason for those individuals in this particular case to spread the rumour at all. P.W.1 swears that he did not believe the announcement and p.w.6 also does not seem to have had reason to believe it.

16. For the reasons stated above, I find that the prosecution has failed to prove beyond reasonable doubt that the accused did make the alleged statement or that the alleged statement was likely to cause fear or alarm to the public or a section of the public.

17. I therefore find that the prosecution has failed to establish a Prima Facie case which if unrebutted would warrant a conviction; and in the result, I discharge the accused under Section 253 Cl(1), Criminal Procedure Code.

Pronounced in open court.

Sd. A.A.Majid,

8/9/1942.

Munsiff-Magistrate, Narasimharajapura.

"COPY"

District Magistrate,
Kadur District.